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HOUSE BILL 672

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Antonio Lujan

AN ACT

RELATING TO LABOR; ENACTING THE DAY LABORER ACT; STRENGTHENING
PROTECTION FOR DAY LABORERS; ESTABLISHING AND AMENDING
PENALTIES FOR FAILURE TO PAY WAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 7 of this act may be cited as the "Day Laborer Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Day Laborer Act:

A. "check cashing service" means a business that
for a fee offers to cash checks or other payment instruments or
that advertises that it cashes checks or other payment
instruments;

B. "day labor" means employment that is under a
contract between a day labor service agency and a third-party

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1 employer, that is occasional or irregular and that is for a
2 limited time period;

3 C. "day labor service agency" means an entity,
4 including a labor broker or labor pool, that provides day
5 laborers to third-party employers and that charges the third-
6 party employer for the service of providing day laborers for
7 employment offered by the employer;

8 D. "day laborer" means a person who contracts for
9 day labor employment with a day labor service agency;

10 E. "department" means the labor department;

11 F. "office worker" means a person employed to
12 perform clerical, secretarial or other semiskilled or skilled
13 work that is predominantly performed in an office setting;

14 G. "payment instrument" means a paycheck, payment
15 voucher or other negotiable instrument from an employer
16 provided to an employee to pay for hours worked; and

17 H. "third-party employer" means a person that
18 contracts with a day labor service agency for the employment of
19 day laborers.

20 Section 3. [NEW MATERIAL] EXEMPTIONS.--The following
21 agencies that provide employees on a short-term or otherwise
22 temporary basis are exempted from complying with the provisions
23 of the Day Laborer Act:

24 A. business entities registered as farm labor
25 contractors;

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1 B. temporary services employment agencies engaged
2 in supplying office workers or professional employees;

3 C. a labor union hiring hall; and

4 D. a labor bureau or employment office operated by
5 a business entity for the sole purpose of employing a person
6 for its own use.

7 Section 4. [NEW MATERIAL] DAY LABOR SERVICE AGENCY--
8 THIRD-PARTY EMPLOYER--DUTIES.--

9 A. A day labor service agency shall compensate day
10 laborers for work performed by providing or making available
11 commonly accepted payment instruments that are payable in cash,
12 on demand, at a financial institution.

13 B. At the time of payment of wages, a day labor
14 service agency shall provide each day laborer with an itemized
15 statement showing in detail each deduction made from wages.

16 C. In no event shall deductions made by a day labor
17 service agency, other than those required by federal or state
18 law, reduce a day laborer's wages below federal minimum wage
19 for the hours worked.

20 D. A day labor service agency shall not restrict
21 the right of a day laborer to accept a permanent position with
22 a third-party employer to whom the day laborer has been
23 referred for work or restrict the right of a third-party
24 employer to offer employment to a day laborer.

25 Section 5. [NEW MATERIAL] CHECK CASHING.--A check cashing
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1 service that is a day labor service agency or is operating
2 within the office of a day labor service agency shall not
3 charge a day laborer for cashing a check or payment instrument
4 that is issued by the agency.

5 Section 6. [NEW MATERIAL] PAYMENT FOR ALL WORK REQUIRED--
6 RECORDS--ENFORCEMENT.--

7 A. A day labor service agency shall pay a day
8 laborer for all hours worked or otherwise due and owed to the
9 day laborer. Failure to pay for each day and all hours worked
10 is a violation of the Day Laborer Act. A person who fails to
11 pay a day laborer for work performed or time due is liable for
12 full payment of the wages not paid and civil damages equal to
13 twice the value of the unpaid wages, court costs and attorney
14 fees and costs.

15 B. A day labor service agency shall maintain true
16 and accurate records of the day laborers employed and of the
17 hours worked and wages paid to the day laborers for at least
18 one year after the entry of the record.

19 C. The department shall investigate complaints and
20 enforce the provisions of the Day Laborer Act.

21 D. The department shall adopt rules necessary to
22 implement the Day Laborer Act.

23 Section 7. [NEW MATERIAL] VIOLATIONS--MISDEMEANOR--
24 PENALTIES.--

25 A. A person who violates the provisions of the Day

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1 Laborer Act:

2 (1) on a first offense, is guilty of a
3 misdemeanor and upon conviction shall be sentenced pursuant to
4 Section 31-19-1 NMSA 1978; and

5 (2) for a second and subsequent offense, is
6 guilty of a misdemeanor and shall be sentenced for a definite
7 term of up to one year in the county jail or shall be fined no
8 less than two hundred fifty dollars (\$250) and not more than
9 two thousand five hundred dollars (\$2,500) for each offense for
10 which the person is convicted.

11 B. Each occurrence of a violation for which a
12 person is convicted is a separate offense. Each violation,
13 whether multiple violations arising from transactions with the
14 same person or multiple violations arising from transactions
15 with different people, shall be considered a separate
16 occurrence.

17 Section 8. Section 50-4-10 NMSA 1978 (being Laws 1937,
18 Chapter 109, Section 11) is amended to read:

19 "50-4-10. FORFEITURE AND PENALTIES.--

20 [~~Any~~] A. An employer who [~~shall violate~~] violates
21 or fails to comply with any provision of [~~this act or fail to~~
22 ~~comply with any provision of this act shall be~~] Sections 50-4-1
23 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and upon
24 conviction [~~thereof~~] for a first offense shall be [~~punished by~~
25 ~~a fine of not less than twenty-five dollars nor more than fifty~~

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1 ~~dollars for each separate offense or by imprisonment of not~~
2 ~~less than ten days nor more than ninety days or by both such~~
3 ~~fine and imprisonment]~~ sentenced pursuant to Section 31-19-1
4 NMSA 1978.

5 B. A person who is convicted of a second or
6 subsequent offense of violating or failing to comply with any
7 provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is
8 guilty of a misdemeanor and shall be sentenced for a definite
9 term of up to one year in the county jail and shall be fined no
10 less than two hundred fifty dollars (\$250) and not more than
11 two thousand five hundred dollars (\$2,500) for each offense for
12 which the person is convicted.

13 C. Each occurrence of a violation for which a
14 person is convicted is a separate offense. Each violation,
15 whether multiple violations arising from transactions with the
16 same person or multiple violations arising from transactions
17 with different people, shall be considered a separate
18 occurrence.

19 D. In case the employer is a corporation, the fine
20 [hereinbefore] provided in this section shall be assessed
21 against [said] the corporation as a penalty."